IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1879 OF 2006
IN
CRI.APPEAL NO. OF 2006

Municipal Corporation of
Gr.Mumbai ..Applicant

Vs.

Shri.N.B.Karnik and Ors. ..Respondents

...
Mrs.Aliya M.Pathan advocate for Applicant
Mr.A.P.Patil A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 27, 2007

P.C.

1. The applicant has filed this application for leave to file appeal against the judgment and order dated 12.5.2005 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in CC No. 11727/ME/2003. By the said judgment and order, the learned Magistrate acquitted the Respondents Nos. 1 to 3 of the offence under Sections 381 r.w. 471 of the Mumbai Municipal Corporation Act. It may be stated that the said offence is punishable with fine only.

2. Heard the learned advocate for the

applicant-Municipal Corporation for Greater Mumbai. I have perused the judgment and order and the evidence produced by the learned advocate for the applicant.

3. The case of the Complainant-Corporation is that original complainant P.W.3 Mr.Samel complained about the cycle stand which was attached to the outside wall of the flat in the society which flat was occupied by the original complainant P.W.3 Samel. It was the case of complainant Samel that as the cycle stand was by the side of the wall of his flat and the cycle stand was near his window, nuisance was caused on account of said cycle stand i.e. nuisance of noise, dust, rats and waste material etc. From the evidence, it is seen that P.W.3 Samel in his cross-examination has admitted that he has widened the size of the window of his flat. Moreover, Exhibit-P-13 a letter produced by Mr.Samel himself shows that society alleged that Mr.Samel's complaints of safety, privacy are ill-founded and the width, breadth and height of his illegally constructed window has created these problems for him and he has to blame himself for his inconvenience and under such situation,

Mr.Samel himself is responsible for creating nuisances for himself. It is further stated that due to increase in the size of the window by Mr.Samel, he has suffered and others cannot be blamed for nuisance.

4. It is seen that it is not the case of complainant-B.M.C. that the cycle stand was newly constructed after the purchase of the flat by P.W.3 Samel so as to cause nuisance or nuisance to him by the society and its office bearers. Mr.Samel has purchased the said flat in the year 1999 and the said building came into existence since 1984. The cycle stand was in existence prior to the purchase of the flat of by Mr.Samel. Immediately after purchasing the flat, Mr.Samel started complaining to the competent authority about the nuisance. There was no complaint of any other person in respect of cycle stand for the initial period of 11 years till Mr.Samel purchased the flat in question. The present complainant has not proved nuisance. No particulars have been given by the present complainant about the nuisance caused to by Respondent. Nuisance has been caused to Mr.Samel on account of his own act i.e. of lowering the

window. Looking to the evidence on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

5. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for.

6. In this view of the matter, application for leave to appeal is rejected. Consequently, appeal

stands dismissed.

[SMT. V.K.TAHILRAMANI,J.]